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5 IN THE CIRCUIT COURT OF THE STATE OF OREGON

6 FOR THE COUNTY OF CLACKAMAS

7 CRAIG and TERESA BARNARD, and
8 BRADY BARNARD,

Case No. 17CV33209

9 **SUMMONS**

10 Plaintiffs,

11 v.

12 STATE FARM FIRE AND CASUALTY
13 COMPANY,

14 Defendant.

15 **TO: STATE FARM FIRE AND CASUALTY COMPANY**
16 CORPORATION SERVICE COMPANY
17 C/O Public Affairs
18 550 Hawthorne Av SE
19 Salem, OR 97301
20 United States

21 You are hereby required to appear and defend the complaint filed against
22 you in the above entitled action within thirty (30) days from the date of service of
23 this summons upon you, and in case of your failure to do so, for want thereof,
Plaintiff(s) will apply to the court for the relief demanded in the complaint.

NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!


22 You must "appear" in this case or the other side will win automatically. To
23 "appear" you must file with the court a legal paper called a "motion" or "answer."
The "motion" or "answer" must be given to the court clerk or administrator within

30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiffs' attorney or, if the plaintiffs do not have an attorney proof of service upon the plaintiffs.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

DATED this 2th day of August, 2017.

SHENKER & BONAPARTE, LLP

By: 
Robert E.L. Bonaparte, OSB #883411
Of Attorneys for Plaintiffs


STATE OF OREGON)
) ss.
County of Multnomah)

I, the undersigned attorney of record for the plaintiffs, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

By: _____
Robert E.L. Bonaparte, OSB #883411

* * *

TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual(s) or other legal entity(ies) to whom or which this summons is directed, and to make your proof of service upon a separate document which you shall attach hereto.


By: 
Robert E.L. Bonaparte, OSB #883411

30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiffs' attorney or, if the plaintiffs do not have an attorney proof of service upon the plaintiffs.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-3763 or toll-free in Oregon at (800) 452-7636.

DATED this 2th day of August, 2017.

SHENKER & BONAPARTE, LLP

By: 
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Of Attorneys for Plaintiffs

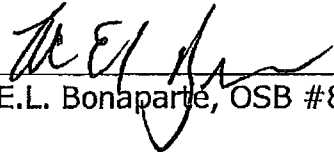
STATE OF OREGON)
) ss.
County of Multnomah)

I, the undersigned attorney of record for the plaintiffs, certify that the foregoing is an exact and complete copy of the original summons in the above entitled action.

By: 
Robert E.L. Bonaparte, OSB #883411

* * *

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By: 
Robert E.L. Bonaparte, OSB #883411

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17CV33209

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF CLACKAMAS

CRAIG and TERESA BARNARD, and
BRADY BARNARD,

Plaintiffs,

v.

STATE FARM FIRE AND CASUALTY
COMPANY,

Defendant.

Case No.

COMPLAINT

**(Breach of Insurance Contract;
Tortious Interference with
Business Relationships;
Negligence; Negligent
Misrepresentation; Intentional
Misrepresentation; Bad Faith and
Unfair Dealing; Intentional
Infliction of Emotional Distress;
Conversion)**

JURY TRIAL REQUESTED

PRAYER AMOUNT: \$1,500,000

FEE AUTHORITY: ORS 21.160(1)(d)

FIRST CLAIM

(Breach of Contract)

COUNT ONE

(Breach of Express Contract)

PARTIES

1. Plaintiffs Craig and Teresa Barnard are, and at all material times mentioned herein were, the owners of property located at 4155 Melissa

1 Drive, Lake Oswego, Oregon (the "property"). Plaintiff Brady Barnard is
2 plaintiffs' 19-year-old disabled son.

3 2. Defendant is, and at all material times mentioned herein was, a
4 corporation authorized to transact and transacting insurance in the state of
5 Oregon.

6 3. State Farm issued a homeowners insurance policy (No. 37-CJ-
7 9638-7) to plaintiffs (the "policy"). The policy was issued for valuable
8 consideration in the form of policy premiums, which were paid by plaintiffs.

9 4. Pursuant to the policy, defendant insured plaintiffs' property and
10 agreed to pay for certain losses, including, but not limited to, structure
11 damage, loss of personal property, and additional living expense ("ALE").

12 5. While the policy was in force, on or about August 14, 2015, an
13 accidental water loss caused structure damage, loss of personal property,
14 and ALE.

15 6. The losses suffered by plaintiffs fall within the coverage of
16 defendant's policy. Pursuant to the terms of the policy, plaintiffs sought
17 payment from defendant for all their damages. Defendant has refused to
18 pay all of plaintiffs' damages.

19 7. Defendant's denial and refusal to pay all of plaintiffs' damages
20 constitutes a breach of the insurance contract.

21 8. As a result of defendant's breach of contract, plaintiffs have been
22 damaged in the amount of \$1,500,000 for structure damage and loss,
23 damage to contents, and ALE.

9. Plaintiffs are entitled to attorney fees under O.R.S. 742.061.

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COUNT TWO
(Breach of Implied Covenant)

10. The allegations in paragraphs 1-9 are incorporated herein by reference.

11. Defendant failed to make payment, refused to make payment, and delayed payment for the water loss in violation of the policy of insurance, thus causing damages to plaintiffs.

12. Defendant violated the implied covenant of good faith and fair dealing in failing properly to investigate the loss, adjust the claim, and pay plaintiffs for losses sustained as a result of the incident, causing damages to plaintiffs:

- a. In 1999, plaintiffs purchased a "Street of Dreams" home (built in 1988) at 4155 Melissa Drive in Lake Oswego, Oregon.
- b. Following their purchase, plaintiffs conducted at least \$250,000 in renovations and upgrades, including new kitchen, new cabinets, and new bathrooms.
- c. On or about August 14, 2015, the failure of an under-the-kitchen-sink water heater manufactured by Emerson resulted in a water loss that caused extensive damage to plaintiffs' structure and contents, and rendered plaintiffs' home uninhabitable.
- d. Plaintiffs promptly reported the loss, and thereby provided proof of loss under Oregon law.
- e. State Farm arranged for Servpro of Lake Oswego to conduct mitigation of the water loss. Servpro of Lake Oswego brought untrained people to the site, and caused further damage during four or five days at the loss site.

- 1 f. Defendant's claim representative James Lively inspected four or
2 five days after the loss, and informed plaintiffs that he: (i) was
3 "not supposed to do this;" (ii) "will deny it if it ever comes up;"
4 (iii) "always carries tools in his car;" and (iv) "needed to take the
5 water heater with him." James Lively then removed the water
6 heater that caused the loss, and compromised the key evidence
7 in connection with the product liability claim against the
8 manufacturer.
- 9 g. Plaintiffs then terminated Servpro of Lake Oswego and hired
10 Servpro of Tualatin to take over the mitigation.
- 11 h. State Farm brought construction inspector Douglas Dick to
12 inspect the home and water in the basement. Douglas Dick
13 determined that water in the basement was not an independent
14 "second loss," as improperly claimed by State Farm, but in fact
15 related to the August 14, 2015 loss. State Farm rejected the
16 conclusions of its own inspector.
- 17 i. State Farm assigned adjuster Michael Sabatino to the loss after
18 approximately two weeks. Michael Sabatino initially refused
19 plaintiffs' request for substitute housing despite the removal of
20 plaintiffs' kitchen.
- 21 j. Plaintiffs informed State Farm's adjuster Michael Sabatino that
22 their son Brady Barnard suffers from a medical condition called Q
23 22 Velo Cardio Facial Syndrome and treats at OHSU. State
Farm's adjuster demanded a letter from OHSU documenting
Brady's disability prior to authorizing housing, which was delayed
until November 18, 2015.

- 1 k. As a result of defendant's actions, plaintiff Teresa Barnard has
- 2 experienced vertigo, onset of skin rash, tachycardia, and stress
- 3 related panic attacks.
- 4 l. Plaintiffs hired METKE Remodeling to conduct repairs. State
- 5 Farm's adjuster Michal Sabatino refused to pay METKE's charges
- 6 and effectively compelled plaintiffs to terminate METKE,
- 7 informing plaintiffs that they "would be left holding the bag if
- 8 they continued with them."
- 9 m. State Farm hired Harry Shook as its construction advisor, even
- 10 though he is not licensed in Oregon and is not allowed to give
- 11 any construction related advice in Oregon.
- 12 n. On February 12, 2016, Michael Sabatino's supervisor Steve
- 13 Hykal threatened plaintiff Teresa Barnard that her State Farm
- 14 agency could be terminated by her pursuit of the claim, stating
- 15 that she was "crossing the line with her agency."
- 16 o. State Farm made chronic underpayments to plaintiffs, forcing
- 17 plaintiffs to cease repairs and absorb further loss.
- 18 p. State Farm informed plaintiffs that Horizon Restoration would
- 19 visit the site to provide an estimate, but Horizon Restoration
- 20 never showed up. Instead, State Farm provided a grossly
- 21 inaccurate repair estimate in disregard of the local area material
- 22 and labor costs.
- 23 q. Brady Barnard has suffered anorexia induced by stress in not
- being able to return to his home environment.
- r. Plaintiffs' contractor Paul Marto has determined the home is a
- tear-down and re-build because of the water loss, and has

1 estimated the cost to replace with like kind and quality at
2 \$1,600,000.

3 s. More than six months have passed since defendant's inspection
4 and plaintiffs' submission of proof of loss.

5 t. Defendant has breached the contract by refusing to pay for all
6 damages.

7 u. Plaintiffs have supplied all appropriate information and
8 documentation.

9 13. It was foreseeable to defendant that if it breached its obligations
under the insurance policy, plaintiffs would suffer damages.

10 14. As a result of the breach of contract by defendant, plaintiffs have
11 suffered damages as set forth in paragraph 8.

12 **SECOND CLAIM FOR RELIEF**
(Tortious Interference with Business Relationships)

13 15. The allegations in paragraphs 1-14 are incorporated herein by
14 reference.

15 16. Plaintiff Craig Barnard is in the real estate business and plaintiff
16 Teresa Barnard owns a State Farm insurance agency.

17 17. State Farm owed a special duty of good faith and fair dealing to
18 plaintiffs as its insureds. This duty requires the insurer to honor with
reasonable promptness meritorious claims arising under the policy.

19 18. State Farm has wrongfully withheld payment on plaintiffs'
20 meritorious claim by the use of improper means, including the assertion of
21 defenses to coverage that are not supported by fact or law and are not
22 asserted with a good faith belief in their validity.

12 23. The allegations in paragraphs 1-22 are incorporated herein by
13 reference.

25. The restoration work done at the direction of defendant was
done negligently, as follows:

- Page 7 - COMPLAINT

contractors' work; (iv) time is of the essence in cleaning damaged items; and (v) plaintiffs should promptly select a State Farm contractor.

c. State Farm's recommended contractor Servpro of Lake Oswego ("Lake Oswego Servpro") met with plaintiffs at the property, and represented that it was important to start the cleaning and restoration process immediately.

d. State Farm's recommended contractor Lake Oswego Servpro brought untrained people to the site and caused further damage.

e. Plaintiffs were compelled to terminate State Farm's recommended contractor Lake Oswego Servpro, and to hire Servpro of Tualatin.

26. Defendant was well aware of the potential that improper mitigation of the residence would subject the structure and contents to continuing damage and deterioration, and result in a smell present in the house adversely affecting the house and the health of plaintiffs, thereby causing economic and physical damage to plaintiffs.

27. As a result of the conduct of defendant, the structure and contents have become subject to further damage and deterioration, and plaintiffs have suffered the damages set forth in paragraph 8.

28. Defendant acted with careless and outrageous indifference to the risk of harm and with a conscious indifference to the health, safety and welfare of plaintiffs and others.

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**FOURTH CLAIM FOR RELIEF
(Negligent Misrepresentation)**

29. The allegations of paragraphs 1-28 are incorporated herein by reference.

30. During its claims handling and restoration work, defendant supplied material false information for the guidance of plaintiffs. In the course of supplying such information, defendant was assisting and acting on plaintiffs' behalf, and plaintiffs were relying on defendant's professional expertise. Therefore, defendant owed plaintiffs a duty of care independent of the contract.

31. Defendant failed to exercise reasonable care or competence in communicating or failing to communicate true and accurate material information to plaintiffs.

32. Plaintiffs, based on their professional business relationships with defendant, had a reasonable expectation that the information supplied by defendant would be truthful and accurate. Defendant was manifestly aware, based on its purported expertise and in its previous course of dealing with plaintiffs, of the use to which information was to be put by plaintiffs. Defendant intended to supply the information for such use.

33. Plaintiffs justifiably relied upon defendant's material and false information in the reasonable conduct of plaintiffs' financial affairs.

34. Defendant's false information was the direct and foreseeable cause of damage to plaintiffs as specified in paragraph 8.

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FIFTH CLAIM FOR RELIEF
(Intentional Misrepresentation)

35. The allegations in paragraphs 1-34 are incorporated herein by reference.

36. On or about August 14, 2015, and continuing throughout the adjustment of the loss, defendant, through its agents, intentionally or recklessly made representations directly to plaintiffs as set forth in paragraphs 12 and 25.

37. Defendant knew that its representations were false when made, and defendant knew and intended that plaintiffs rely on such false representations.

38. Plaintiffs reasonably believed and justifiably relied on defendant's false representations.

39. The false representations were material and induced plaintiffs to proceed as directed by defendant.

40. As a direct result of defendant's false representations, plaintiffs have suffered the damages set forth in paragraph 8.

41. Defendant's false representations were willful, wanton, and committed with malice, in disregard of societal norms, and were made with reckless disregard of the rights of plaintiffs. Plaintiffs plan to amend to claim punitive damages.

SIXTH CLAIM FOR RELIEF
(Bad Faith and Unfair Dealing)

42. The allegations in paragraphs 1-41 are incorporated herein by reference.

1 43. Defendant owed to plaintiffs a duty of good faith in claims
2 handling, independent of the policy contract.

3 44. Defendant breached its duty.

4 45. As a direct result of defendant's breach of its duty of good faith,
5 plaintiffs have suffered the damages set forth in paragraph 8.

6 46. Defendant's breach was willful, wanton, and committed with
7 malice, in disregard of societal norms, and were made with reckless
8 disregard of the rights of plaintiffs. Plaintiffs plan to amend to claim punitive
9 damages.

10 **SEVENTH CLAIM FOR RELIEF**
11 **(Intentional Infliction of Emotional Distress)**

12 47. The allegations in paragraphs 1-46 are incorporated herein by
13 reference.

14 48. Defendant owed a special duty of good faith and fair dealing to
15 plaintiffs, its insureds. This duty requires the insurer to honor with
16 reasonable promptness meritorious claims arising under the policy.

17 49. Defendant has known of plaintiffs' susceptibility to emotional
18 distress since its agent's initial sale and subsequent renewals of the policy to
19 plaintiffs through the time of the loss. Defendant also knew that plaintiff
20 Brady Barnard suffered from a serious medical condition.

21 50. Defendant intended to and did cause plaintiffs emotional
22 distress, and committed the following outrageous acts in furtherance of such
23 intent:

- a. Defendant knew it owed plaintiffs money when plaintiffs promptly reported the damage to their home, and defendant

1 admitted to plaintiffs there was damage to the home and
2 contents.

3 b. Defendant knew it owed plaintiffs substantial money for
4 restoration and repair, but constructively denied coverage.

5 c. Defendant did not promptly pay plaintiffs the money that
6 defendant knew it owed plaintiffs but instead has delayed for
7 over 24 months.

8 d. Defendant knew that its delay would result in plaintiffs being
9 forced to live in substandard housing for over 24 months.

10 e. Defendant was well aware of the potential that improper
11 restoration of the structure and contents of the residence would
12 subject the structure and contents to continuing damage and
13 deterioration, and result in a smell present in the house
14 adversely affecting the house and the health of plaintiffs,
15 thereby causing economic and physical damage to plaintiffs.

16 51. As a result of said actions, plaintiffs suffered severe nervous and
17 emotional trauma and stress due to defendant's intentional delay in
18 repairing the home and refusal to restore plaintiffs' damaged contents.
19 Plaintiffs claim \$1,000,000 in noneconomic damages.

20 52. Defendant's actions have been in wanton, willful disregard of
21 social norms and standards, and in some cases, calculatingly malicious.
22 Plaintiffs plan to amend to claim punitive damages.

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**EIGHTH CLAIM FOR RELIEF
(Conversion)**

53. The allegations in paragraphs 1-52 are incorporated herein by reference.

54. Defendant's claim representative James Lively intentionally exercised dominion over the hot water heater that caused the loss and interfered with plaintiffs' right to control it. Defendant's interference compromised critical evidence in connection with the product liability claim against the manufacturer.

WHEREFORE, plaintiffs pray for relief from defendant as follows:

- (a) On the FIRST CLAIM FOR RELIEF: For damages in the amount of \$1,500,000;
- (b) On the SECOND CLAIM FOR RELIEF: For compensatory damages in the amount of \$1,000,000;
- (c) On the THIRD CLAIM FOR RELIEF: For damages in the amount of \$1,500,000;
- (d) On the FOURTH CLAIM FOR RELIEF: For damages in the amount of \$1,500,000;
- (e) On the FIFTH CLAIM FOR RELIEF: For compensatory damages in the amount of \$1,500,000;
- (f) On the SIXTH CLAIM FOR RELIEF: For compensatory damages in the amount of \$1,500,000;
- (g) On the SEVENTH CLAIM FOR RELIEF: For compensatory damages in the amount of \$1,000,000;
- (h) On the EIGHTH CLAIM FOR RELIEF: For compensatory damages in the amount of \$1,000,000;

- 1 (i) For prejudgment interest at the legal rate from August 14,
2 2015;
3 (j) For plaintiffs' attorney fees, costs and disbursements herein;
4 and
5 (k) For such other relief as the court deems just and proper.

6 DATED this 2nd day of August, 2017.

7 SHENKER & BONAPARTE, LLP

8 By /s/ Robert E.L. Bonaparte
9 Arden E. Shenker, OSB No. 620826
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11 Telephone: (503) 242-0005
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13 Attorneys for Plaintiffs Craig and Teresa
14 Barnard, and Brady Barnard

15 Trial Attorneys:
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